IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12670 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARUN BABULAL SHAH - Petitioner(s)

Versus

ASSISTANT COMMISSIONER PROVIDENT FUND - Respondent(s)

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Appearance :

MR EE SAIYED for Petitioner No(s).: 1.

MR SIKANDER SAIYED for Petitioner No(s).: 1.

MR MS RAO for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/08/2005

ORAL JUDGMENT

1. Leave to amend the prayer clause by challenging the order passed by the Controlling Authority dated

22th June, 2005 passed under Section-7-B of the Employees Provident Funds And Misc. Provisions Act, 1952 (hereinafter referred to as the “EPF Act”)

2. **Rule.** Service of rule is waived by Shri M.S.Rao, learned advocate on behalf of the respondent. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Controlling Authority passed under Section-7-A of the Act dated 9.4.2002 as well as the order passed under Section-7-B of the Act dated 22.6.2005. It appears from the record that the petitioner has submitted application under Section-7-B of the Act to review the order dated 9.4.2002 passed under Section-7-A of the Act, however, as the controlling authority was of the opinion that the said application is not filed within 45 days, the same is time barred and therefore, did not entertain

the application under Section-7-B of the Act.

4. It is the contention of behalf of the petitioner that they came to know about the order under Section-7-A of the Act only on 25.8.2004 and if the limitation is considered from 25.8.2004, the review application was within a period of 45 days. Shri Saiyed, learned advocate has also tried to argue the matter on merits, however, considering the facts and circumstances of the case, this Court proposes to direct the Controlling Authority to decide and dispose of the review application under Section-7-B on merits on making 25 % payment of the amount due and payable and therefore, this Court is at present not entertain into the merits of the case.

5. Considering the submissions on behalf of the petitioner that they have received the copy of the order on 25.8.2004 and according to the petitioners, they have got meritorious case, without entering into larger question whether the said order was served upon the petitioner on 25.8.2004 or not, it will be in the fitness of things to direct the controlling

authority to decide and dispose of the review application under Section-7-B of the Act on merits. The petitioner is directed to deposited 25 % amount due and payable with the controlling authority within a period of four weeks from today and on such payment, he controlling authority is directed to decide and dispose of the review application under Section-7-B of the Act in accordance with law and on merits within a period of eight weeks thereafter. Till then no coercive action should be taken against the petitioner provided the petitioner files an undertaking within one week from today before this Court that they will deposit 25 % of the amount within four weeks as stated hereinabove with a copy to the learned advocate for the respondent.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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